No. (1)

Supreme Court, U.S.
FILED
06-437 JUL 27 2006
OFFICE OF THE CLERK

In The

Supreme Court of the United States

IN RE DAVID MAYS,

Petitioner.

**On Petition For A Writ Of Mandamus
Or In The Alternative Prohibition
To The Supreme Court Of Georgia**

PETITION FOR A WRIT OF MANDAMUS

DAVID MAYS
3412 Martin Luther King Jr.
Dr. S.W.
Atlanta, Georgia 30331-1714
404-696-6466

QUESTIONS PRESENTED

Given the requirement of Amendment V of the United States Constitution, can the duty of due process be denied by all judges to hear and determine all orders and motions within any petition?

Given the requirement of Amendment VII of the United States Constitution, can a right to trial be abandoned based on misleading information (without affidavit) provided to the Court?

PARTIES TO THE PROCEEDING

Petitioner:

David Mays
3412 Martin Luther King Jr. Dr. S.W.
Atlanta, Georgia 30331
404-696-6466

Respondents:

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DOWNEY & CLEVELAND, LLP
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770-422-3233

DaimlerChrysler Motors Corporation
c/o Stan F. Gwinner
P.O. Box 21-8004
Auburn Hills, Michigan 48321-8004
800-992-1997

Mary Miller, Candace M. Fair, Mike O. Crawford IV & Candace M. Bouthwell
MARY A. MILLER & ASSOCIATES, LLC
5555 Oakbrook Pkwy., Suite 670
Norcross, Georgia 30093-6205
678-966-9792

The Honorable James Bodiford
Judge, Superior Court of Cobb County
30 Waddel Street
Marietta, Georgia 30090-9642
770-528-1300

SUPREME COURT OF GEORGIA
244 Washington Street, N.W.
572 State Office Annex
Atlanta, Georgia 30334
404-656-3470

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The Supreme Court of Georgia denied the petition for Mandamus of S06A0691. *Mays v. Ed Voyles Chrysler-Plymouth, Inc. et al.* (unpublished opinion). A copy of this opinion is attached at Appendix App. 1.

JURISDICTION

The Supreme Court of Georgia judgment was entered on May 8, 2006. A timely motion for reconsideration was denied on June 12, 2006. This Court has jurisdiction to issue a writ of Mandamus in this case under Rule 20.1 and supported by 28 U.S.C. § 1651(a).

JUSTIFICATION FOR GRANTING THE WRIT

Within the duties of the Court, there exists a public concern that justice be done for all individuals without respect to position or intellect. The following argument will show that this Court must act to prevent thousands of others from experiencing the same arbitrary experience. Within the Cobb Superior Court of Georgia there exists the abandoning an existing court order [(R-25-28 of the Mandamus Petition No. 05-1-2513-33) with respect to Civil Action No. 01-1-02352-33]. There also exists no dutiful action of the Cobb Superior Court of Georgia on a motion for trial presented within the same petition (R-7-11 contained within the Mandamus petition No. 05-1-2513-33).

The facts clearly show that there exists sufficient authorization for this Supreme Court to act because an issue of public concern is involved. [*United States Alkali*

Export Ass'n v. U.S., 325 U.S. 196, 89 L.Ed. 1554, 65 S.Ct. 1120 (1945)].

There exists a clear legal duty for some type of action on the "pro se" documents produced, regardless of the literary deficiencies of the petitioner. The actions as stated in the facts suggest the present possibility for a needed review. The petitioner requests that this Court entertain this writ of review of the court sought. [*Halleck v. Berliner*, 427 F.Supp. 1225 (D.C. Dist. Col. 1977)].

Based on the facts presented the petitioner requests that this Court require of the lower Court to give reason why it should not compel it to exercise its authority when it is its duty to do so. [*So. Platt v. 3M*, 376 U.S. 240, 11 L.Ed.2d 674, 84 S.Ct. 769 (1964)].

The facts show that there exists a lack of due process as guaranteed by the Fifth Amendment of the United States Constitution [Due Process Clause] states:[Nor shall any person . . . be deprived of life, liberty, or property, without due process of law . . .].

Based on the compelling need to quell public concerns and not deprive any individual of his rights, the petitioner requests this Court grant the *Motion for Leave to File* and allow him to proceed under this Court's Rule 20.2, Petition for Mandamus (28 U.S.C. § 1651(a)).

CONSTITUTIONAL PROVISION

The Fifth Amendment of the United States Constitution [Due Process Clause] states:

> Nor shall any person . . . be deprived of life liberty, or property, without due process of law . . .

The Seventh Amendment of the United States Constitution [Right to Trial Clause] states:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved.

STATEMENT OF THE CASE

David Mays, petitioner, contracted with the Ed Voyles Chrysler-Plymouth Dealership on June 28, 2000 for a specific vehicle. The amount of $500.00 was given to the dealership with a corresponding order number. The receipt numbered 068104 was given to the petitioner to acknowledge the agreement. The dealership called David Mays in late February of 2001, and stated that the ordered vehicle was on site ready for pick up. After being called in late February 2001, the petitioner came to the dealership in early March 2001 to pick up the vehicle. David Mays was told that the vehicle was no longer available but there was one available at a price that was more than $5,000.00 which was more than the contracted amount. The petitioner was told that, "The car had to be sold because Chrysler would not send any more cars unless the ones on hand were sold." The petitioner would not accept the offer by the dealership and left the dealership awaiting the return of the contracted amount.

On April 3, 2001, the petitioner presented at the dealership with a petition that was not filed to talk to the manager of the dealership. The manager, Steve Lee, upon entering his office, simply flipped the non-filed petition back in the face of David Mays and then stated, "Have your lawyers call our lawyers." The petition was then taken to the Court and filed the same date [Civil Action No. 01-1-02757-33] with a subsequent Order to Mediation given shortly afterward for June 29, 2001. Appendix at App. 3.

The petitioner was present for the ordered mediation conference on June 29, 2001 and was told that the meeting was cancelled, though there was no confirmation from the mediator. Rule 2, Paragraph B, of the Cobb County of Georgia mediation states that, "Unless otherwise ordered by the court, the first mediation conference shall be held within 60 calendar days after the appointment of the mediator." R-26 [Mandamus Action No. 05-1-2513-33]. A motion for summary judgment was granted and ordered on August 7, 2001, the 64th day with the mediation order not being stayed. Within the initial petition there existed a motion for trial submitted on June 13, 2003. The Order to close the Civil Action No. 01-1-2757-33 was signed by Judge James G. Bodiford on May 7, 2005, without addressing the motion for trial.

The DaimlerChrysler Motors Corporation was made aware of the above activities in March of 2002, but chose to allow the actions of their settlement representatives to intimidate as they saw fit. The representatives of Mary A. Miller & Associates chose to send a stick of chewing gum within their letter [dated January 9, 2003] for some unknown legal reason. The Court will note that this was during the time of the anthrax scare and because of these

liberal allowances, I have a fear of opening any legal correspondence as well as appearing in a courtroom environment. [Chewing gum correspondence located in R-29-30 of Mandamus Civil Action No. 05-1-2513-33].

I have taken the present position to make a statement to this Court; that anyone who presents these cavalier attitudes only lowers the standard of judicial behavior and is always counterproductive to the public good. It is evident that DaimlerChrysler fully condones this type of behavior and would rather litigate all of its customers into bankruptcy rather than talking to them.

The Mandamus petition [Civil Action No. 05-1-2513-33] was also ruled upon by the same Judge James G. Bodiford and was appealed before the Supreme Court of Georgia. The opinion of May 8, 2006, of the Supreme Court of Georgia stated that, "no harmful error of law, properly raised and requiring reversal appears." The motion for reconsideration was denied on June 12, 2006.

The duties of the Court must be evaluated with the common good of the public of paramount concern. It is my hope that within these proceedings that the outcome be an improved judicial system in which checks and balances exist.

REASONS FOR GRANTING THE WRIT

This case warrants review for a number of important reasons. There exists the need to determine whether due process and a right to trial have been intentionally overlooked by the Court. The actions of some of the respondents under Rule 14(b) clearly show acts of important

public concern. The actions as stated in the facts allow Rule 20(1) to be utilized because relief cannot be obtained in any other form or from any other court.

The All Writs Act (28 U.S.C. § 1651(a)) provides sufficient authorization for this Court because an issue of public importance is involved. [*United States Alkali Export Ass'n v. U.S.*, 35 U.S. 196, 89 L.Ed. 1554 65 S.Ct. 1720 (1945)]. The facts also show that there may be a clear abuse of discretion or usurpation of judicial power. [*La Buy v. Howes Leather Co.*, 352 U.S. 249, 1 L.Ed. 290, 77 S.Ct. 309 (1957)].

Given this Honorable Court's practice of sparsely exercising a grant of writ of mandamus; this case warrants consideration in order to protect others and assure their Due Process and Right to Trial. The practice also hinders this Court's function as the ultimate authority concerning federal questions. Therefore, this Court should grant mandamus to also ensure the proper functioning of the judiciary pursuant to its supervisory power under Rule 20.2 of the Supreme Court Rules.[1]

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[1] The Court may grant a writ of mandamus in order to exercise its supervisory powers under 20.1 of the Supreme Court Rules.

"[T]he reasons the Court considers:

> (1) that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court." Rule 22.1 of the Supreme Court Rules.

I. Given the Requirement of Amendment V of the United States Constitution, can the duty of due process be denied by all judges to hear and determine all orders and motions within any petition?

The initial denial of due process occurred within the Cobb Superior Court of Georgia as contained within its own Mediation Rules. As stated in the facts of this case, there existed a Mediation Order (located within Mandamus petition – Civil Action No. 05-1-2513-33 [R-26])[2] The petitioner has shown within the facts that many acts of "due process" have been violated. The record shows within the record that the court ordered mediations (Civil Action No. 01-02757-33 of the Cobb Superior Court of Georgia, Mandamus Petition 05-1-2513-33, R 12-13 of earlier civil action number 01-1-02757-33 [within the mandamus petition 05-1-2513-33], was abandoned in lieu of a summary judgment formalized after the existing rule requirement. Within the same record as stated above, the due process was continued by inaction on a motion for trial (R-7-10) [within the mandamus petition 05-1-2513-33].

The due process was hindered by the complete omission of the mediation process. This Court should note that within the confines of the mediations order, there existed a "duty" of the Court to do something. The action of the Cobb Superior Court of Georgia is contrary to a similar case which states: "underlying Superior court action pending mediation/arbitration needed to be stayed." [*Pac. Life Ins. Co. v. Health*, 370 F.Supp.2d 539

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[2] Order implemented by Superior Court of Cobb County, State of Georgia, Chief Judge Watson L. White, March 22, 1993 and states: (b) Conference or Hearing Date. Unless otherwise ordered by the Court, the first mediation conference shall be held within 60 calendar days after the appointment of the mediator.

(SD Miss. 2005).] There existed a clear duty of the court to render some type of action.

The DaimlerChrysler Corporation of America has been aware of these proceedings from its legal inception, and has condoned the denial of due process by allowing its subordinates to send threatening and non-legal substances within their corporate correspondence. The facts support that DaimlerChrysler was in position to have mediation but chose "to frustrate implementation of court or proper administration of justice" [*Catskill Mts. Chapter of Trout Unlimited Inc. v. City of New York*, 244 F.Supp.2d 41 (ND NY 2003)].

The denial of Amendment V of the United States Constitution is more evident in the documents contained within and on record. Within the Petition for Mandamus Civil Case No. 05-1-2513-33 there exists an unknown signature of Judge James Bodiford. The appearance of this signature is a clear usurpation of judicial power and renders the document moot and again denying "due process." [*La Buy v. Howes Leather Co.*, 352 U.S. 249, 1 L.Ed. 290, 77 S.Ct. 309 (1957)]. Being an agent of the DaimlerChrysler Corporation, there exists a sharing of "due process denial."

There exists a continuance of the denial of "due process" by allowing this proceeding to continue in violation of the Georgia Constitution 1983, Article VI, Section VI, Paragraph I, which requires under Judicial Decisions and states: "Being the respondent, the superior court judge will disqualify, another superior court judge will be appointed to hear and determine the matter, and the final decision may be appealed to the Supreme Court for review." The record clearly shows that the Constitution of the State of Georgia was negated allowing a continuum of "due process" neglect.

Therefore, based on the argument presented, this Court should conclude that "due process" as guaranteed

in Amendment V of the United States Constitution has been overlooked. The potential application of "due process" to thousands of DaimlerChrysler customers is one of major public concern.

II. Given the requirement of Amendment VII of the United States Constitution, can a right to trial be abandoned based on misleading information (without affidavit) provided to the Court?

Based on the Admission as provided in the Mandamus petition in Cobb Superior Court of Georgia (Civil Action No. 05-1-2513-33, R-59 item 3) the respondent still has the deposit of $500.00 which has not been returned to date. A trial or affidavit within these proceedings would be the only way of obtaining the truth and support the requirement of Amendment Seven's "Right to Trial Clause."

In addition to the Admissions provided in (R 58-60 of Mandamus Petition -Civil action number 05-1-2513-33), this Court should also address its attention to App. 4 and App. 5 respectively which shows the initial contract. It is evident that DaimlerChrysler has sanctioned this practice of keeping all deposits and to have litigious litigation with anyone who questions their keeping of the funds. Based on the App. 4 and App. 5 along with Admissions, there existed then and now, a right to trial as guaranteed under Amendment VII.

The only simple question that this Court need address is: "Why were the monies never returned to the petitioner?" The answer to this question makes clear the larger impeachment of Amendment VII of the United

States Constitution.[3] The existence of App. 9 and App. 10 with no accountability by any of the DaimlerChrysler Corporation also supports keeping thousands of $500.00 with no intention of returning the monies. It is clear that within the context of questioning their principles that they will probably intimidate you with a stick of gum [Copy contained within petition for Mandamus Civil No. 05-1-2513-33 (R-29&30)]. The meaning of the gum as it relates to this due process is clear in Illustration 2, with the caption reading "Chrysler will give you some gum and violate your rights."

The act of arbitrarily choosing which orders or motions that are ruled upon present a direct public concern. The duties of the Court mandate that the public should be protected from predators who willfully take deposits or any other funds without return. The question is now "How many other consumers funds did the Chrysler cooperation keep with no intent of returning?"

Within this petition there exists App. 4 (Exhibit X) and the more specific App. 5 (Exhibit M) validation which conforms to prima facie evidence. It should be noted that this conforms to a federal case which was in Georgia. The case notes that "providing that endorsements on notes were prima facie evidence that they were endorsed by the proper party controlled federal court in that state" [*M'Niel v. Holbrook*, 37 U.S. 84, 9 L.Ed. 1009 (1838)]. It is clear that if opposing counsel cannot provide any related Affidavit that Amendment VII "Right to Trial Clause" has been violated.

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[3] Amendment Seven of the United States Constitution [Right to Trial Clause] states: "In Suits at common law where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved."

CONCLUSION

In conclusion, the petitioner has no other remedy or venue available in order to obtain closure. The public interests with respect to consumer protection are directly related to this case. The Supreme Court of the United States' Judiciary Act of 1789's purpose is to bring cases to final judgment or decree, so they may be reviewed. [*Kendell v. U.S.*, 37 U.S. 524, 12 Pet. 524, 9 L.Ed. 1181 (1838)]. As a private citizen, it is necessary to take a stand for justice, truth and equity for all Americans. Petitioner has no idea why petitioner was chosen to write this discourse nor why DaimlerChrysler has persisted to give him one single phone call. The facts and citations show that the Chrysler Corporation actively participated in denying the petitioner's Fifth and Seventh Amendment Rights. Every motion and order should be handled with respect of the individual. As cited earlier in this paragraph, this Court can provide closure.

It is apparent that the sheer number of Civil Cases will have some percentage of error; but this case has persisted for almost six years with the assumption that the petitioner will be too ignorant or too broke to pursue it to the end. The context of this case pits deep pocket arrogant, rich corporations against the poor and unskilled consumers. The public and consumer are directly affected in these proceedings, and this public concern must be addressed by this Court.

Based on the argument and supporting documentation, the petitioner feels that he has met the "burden of providing adequate basis for relief." [*Taylor v. Resor*, 19 U.S. CMA 405, 42 CMR 7 (1970)].

The petitioner, David Mays, ask this Court that this poor and unskilled petitioner be considered worthy of

having consideration of granting a writ of mandamus for the Questions argued and cited.

Respectfully submitted,

DAVID MAYS
3412 Martin Luther King Jr. Dr. S.W.
Atlanta, Georgia 30331-1714
404-696-6466

IN THE SUPREME COURT

STATE OF GEORGIA

CASE No. S06A0691

David Mays **Plaintiff-Appellee,**

versus,

Ed Voyles Chrysler-Plymouth, Inc., et al. **Defendant-Appellants.**

Appeal from the Cobb Superior Court
for the State of Georgia
Civil Mandamus Action: No. 05-1-2513-33

(Decided: May 8, 2006)

Before: all Justices except Chief Justice Lea Ward Sears (absent during oral argument)

PER CURIAM.

The judgment of the court below is affirmed without opinion pursuant to Supreme Court Rule 59.*

Affirmed without opinion. All Justices concur.

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* Rule 59. AFFIRMANCE WITHOUT OPINION. An Affirmance without opinion may be rendered in any civil case when the Court determines one or more of the following circumstances exist and is dispositive of the appeal.

(1) The evidence supports the judgment.

(2) No harmful error of law, properly raised and requiring reversal appears; or

(3) The judgment of the court below adequately explains the decision and an opinion would have no precedential value.

IN THE SUPREME COURT

STATE OF GEORGIA

Case No. S06A0691

David Mays **Plaintiff-Appellee,**

versus,

Ed Voyles Chrysler-Plymouth, Inc., et al. **Defendant-Appellants.**

Appeal from Cobb Superior
for the State of Georgia
Civil Mandamus Action No: 05-1-2513-33

Decided June 12, 2006

The Honorable Supreme Court met
pursuant to adjournment.

The following order was passed:

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

AFFIDAVIT

Under 28 US Code § 1746(2)

I, David Mays, Petitioner, declare under penalty of perjury that the foregoing is true and correct. This Affidavit applies to all information submitted and any and all written correspondence and more specific the copied receipt (Exhibit X) and corresponding bank documentation (Exhibit M).

/s/ David Mays
David Mays
Executed this 20 day
of July, 2006.

As supported by United States v. Gomez-Vigil (1991, CA6 Mich) 929 F.2d 254.

3412 Martin Luther King Jr. Dr. S.W.
Atlanta, Georgia 30331-1714
404-696-6466

Exhibit X
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ED VOYLES CHRYSLER-PLYMOUTH
789 COBB PARKWAY, S.E.
MARIETTA, GEORGIA 30062
(770) 429-1100

068104

RECEIVED FROM:

© 1992 MCP TO REORDER FORMS OR SUPPLIES CALL 1-800-999-6348 EXT. 6050
4 CARBONLESS, RECYCLABLE PAPER 71472
THIS FORM PR

DAVID A MAYS

NAD# 612298 DATE 06/28/00
REF# 068104 AMOUNT $500.00
CTL# 00062800

CHECK# 7305

DEPOSIT ON PT CRUISER

CHRYSLER 105 06/28/00 GA 318 13:28

DESCRIPTION	G/L	CONTROL#	MEMO	AMOUNT
VEHICLE ACCOUNTS	1.1	00062298		500.00-

ON LINE CASH RECEIPT BY UCS

BEST AVAILABLE COPY

Best Copy Available

DAVID A. MAYS, DDS
404-696-6465
3412 MARTIN LUTHER KING, JR DR S.W.
ATLANTA, GA 30331

EXPLANATION	AMOUNT

64-22/610
BRANCH 76052

7305

AMOUNT Five hundred and 00/100 DOLLARS

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NUMBER	CHECK AMOUNT
6/26/00	Ed Voyles Chrysler Plymouth, Inc	Deposit (P.C Crusier)	7305	$ 500.00

NAD# 612298

FIRST UNION NATIONAL BANK
ATLANTA, GEORGIA

David A Mays DDS
AUTHORIZED SIGNATURE

⑈007305⑈ ⑆061000227⑆ 2080000185202⑈ ⑈0000050000⑈

App. 5

90141970
BANK OF AMERICA
061000078
REFERENCE # 63804
CONTROL # 63804
FOR DEPOSIT ONLY
ED VOYLES CHRYSLER-PLYMOUTH INC.
GENERAL ACCOUNT

David Mays

REQUEST 00001447562000000 500.00
ROLL ECIA 20000629 000002100962808
JOB ECIA F ACCT 0052080000185202
REQUESTOR MARK BAILEY

Carmen Diamond
Notary Public, Clayton County, Georgia
My Commission Expires February 8, 2008

GREENBRIAR
GA9195
ATLANTA, GA 99999-99 99

Exhibit M
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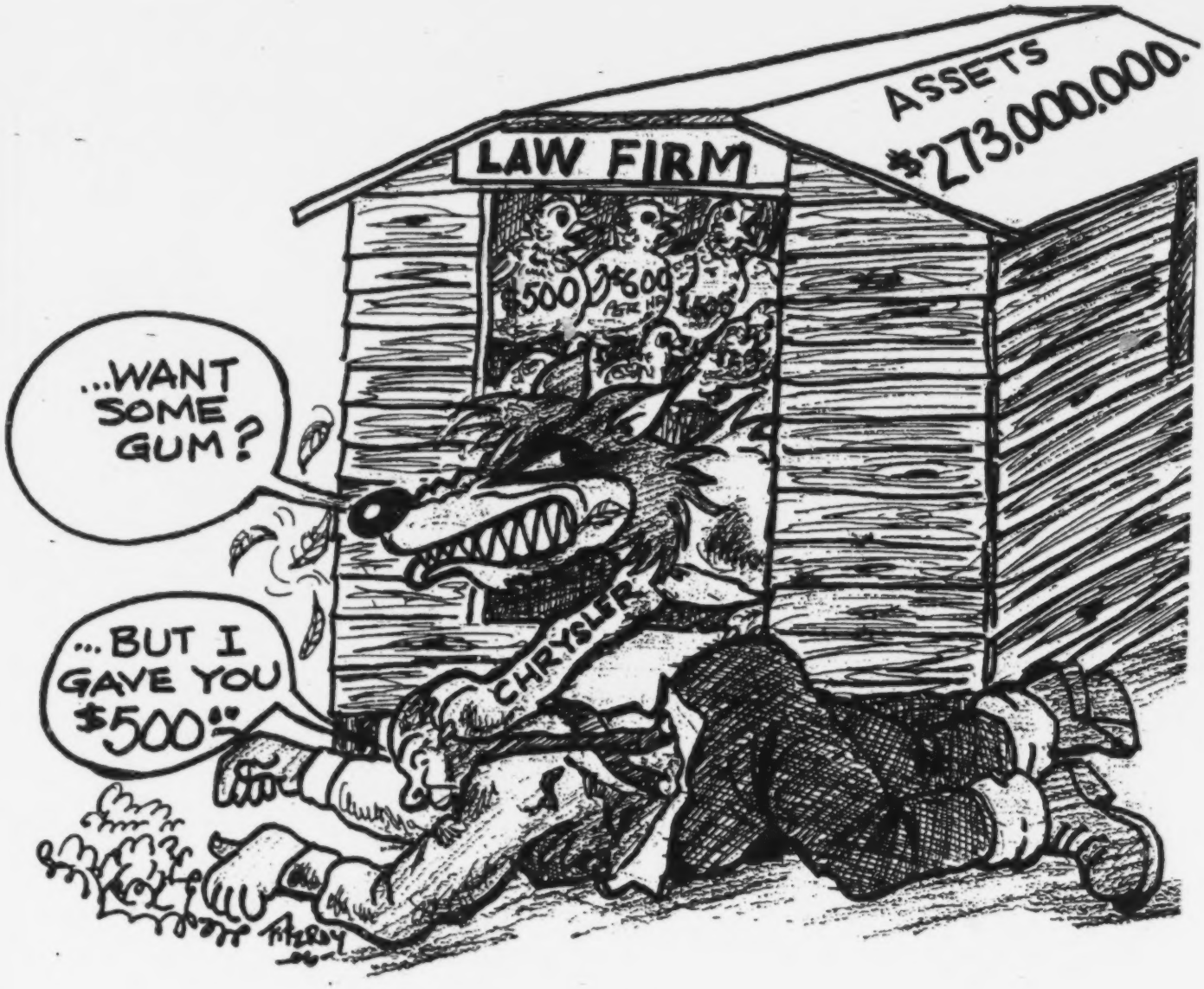
LAW FIRM
ASSETS
$273,000,000.
$500
...WANT SOME GUM?
...BUT I GAVE YOU $500"
CHRYSLER